

PRESS RELEASE

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\$100,000 To Be Paid by Pharmaceutical Company for Overcharging DC Medicaid Program

Washington, DC – Inspector General Charles C. Maddox and the National Association of Medicaid Fraud Control Units (“NAMFCU”) announced today that TAP Pharmaceutical Products, Inc. (“TAP”) agreed to pay \$56.7 million to the state Medicaid programs for damages caused by TAP’s marketing practices for its drug Lupron, used for the treatment of prostate cancer. As part of the settlement, the District of Columbia will recover approximately \$100,000 (precisely, \$101,753.64) in restitution and penalties. The agreement in principle involves all 50 states plus the District of Columbia. To date, 43 states and the District of Columbia have executed settlement agreements.

The agreement is the largest healthcare global settlement ever reached by states and the federal government. It was reached in conjunction with a federal settlement negotiated by the United States Attorney’s Office in Boston, Massachusetts. Under the federal agreement, TAP will plead guilty to charges of conspiracy to violate the Prescription Drug Marketing Act, and enter a civil settlement to pay damages to Medicare and other federally funded health care programs. As part of the federal settlement, TAP will pay the federal government \$524.3 million as well as a substantial criminal fine.

These settlements are the culmination of a lengthy investigation into TAP’s marketing practices. The marketing practice centered around TAP’s provision of free dosages of Lupron to physicians and other providers, knowing that these providers would bill these free dosages to health care insurers, including Medicaid and Medicare. When TAP failed to include the free Lupron in the calculation of its “best price” as required under the federal Medicaid drug rebate program, the District of Columbia alleges that the state Medicaid programs received lower rebate amounts than due.

A second marketing practice addressed by this settlement involved TAP’s inflation of “Average Wholesale Price (AWP).” Medicare and most state Medicaid programs base pharmaceutical reimbursements on “AWP.” By inflating “AWP,” the District of Columbia alleges that TAP created an economic incentive for physicians to prescribe its product, because the physician kept the “spread” between the true purchase price and the

reported “AWP.” This resulted in damage to the various Medicaid programs by causing inflated reimbursement to physicians and others who used TAP’s products.

As part of the agreement in principle with the states, TAP will be required to report accurate pricing information to the state Medicaid programs as well as the commercial price reporting services that provide pricing information to the states. Additionally, TAP will cooperate with the states in investigating other health care providers, including physicians, who have damaged the Medicaid programs by taking advantage of TAP’s marketing schemes.

Finally, as part of the settlement, TAP has entered into a Corporate Integrity Agreement (“CIA”) with the United States Department of Health and Human Service’s Inspector General. The CIA will require strict scrutiny of TAP’s marketing and sales practices for the next seven years. Leading the state negotiation team were the respective State Attorneys’ General Medicaid Fraud Control Unit Directors from Oregon, Washington, and Ohio.

This is an example of efforts made by the D.C. Inspector General’s Medicaid Fraud Control Unit (MFCU) to assure that the District of Columbia is incorporated in all national healthcare fraud initiatives. The Unit was created in March of 2000, and is responsible for investigating and prosecuting healthcare fraud and patient abuse.

For further information, please contact Barbara Zelner, counsel for NAMFCU, (202) 326-6020, or Ilene Nathan at the Medicaid Fraud Control Unit of the D.C. Office of the Inspector General at (202) 727-2540.